A

PERINDUSTRIAN CYMA SDN BHD

v.

MALAYSIA & NIPPON INSURANS BHD; EON BANK BHD (INTERVENER)

B

HIGH COURT MALAYA, PULAU PINANG
BALIA YUSOF WAHI J
[CIVIL SUIT NO: 22-485-2003]
18 DECEMBER 2008

C

CIVIL PROCEDURE: *Parties - Intervention - Application to intervene in suit - Rights of the intervener - Whether intervener had direct interest in subject matter of action - Whether intervener passed test laid down in Pegang Mining Co Ltd v. Choong Sam & Ors - Leave to intervene -* D *Whether ought to be given - Rules of the High Court 1980, O. 15 r. 6(2)*

This was an appeal against the decision of the deputy registrar dismissing the application of the intended intervener to intervene in the suit between the plaintiff and the defendant. The proposed E intervener formerly known as Oriental Finance Bhd had entered into a hire purchase agreement with the plaintiff to hire 22 units of Toyota Air Jet Loom, some machineries used by the plaintiff at its factory. By way of cl. 3(iii) of the said hire purchase agreement, the plaintiff had taken out an insurance policy with the defendant F insuring the said machineries under its name as the insured and the intervener as the owner. During the currency of the said policy, the plaintiff's premises caught fire and the said machineries were destroyed. The plaintiff subsequently brought this action against the defendant as the insurers upon the defendant's refusal G to admit liability and the interveners were also informed of this fact by the defendant. In the meantime, the intervener had also communicated with the defendant intimating their intention to intervene in the suit between the plaintiff and the defendant.

H **Held (allowing the appeal with costs; setting aside registrar's order):**

(1) The powers of the Judge under O. 15 r. 6(2)(b) of the Rules of the High Court 1980 is discretionary and may be invoked I at any stage of the proceedings and any order for such, may be made either on application or on the court's own volition.

The purpose and spirit of O. 15 r. 6(2) of the Rules of the High Court 1980 is to prevent a multiplicity of proceedings and to enable the court to determine disputes between all the parties. It is always desirable for the court to observe the principle that all parties ought to be brought before the court so that their rights and liabilities may be determined in one action instead of in several. The rule is made to enable the courts to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. (para 5)

(2) The intervener had a direct interest in the subject matter of the action between the plaintiff and the defendant. Endorsement C002 in the Special Contingency Schedule to the Special Contingency Policy as exhibited (the affidavit in support of the intervener's application) speaks of the right of the intervener as owners of the insured goods/machineries. Any payment made in respect of loss or damage under the terms of the policy shall be made to the owners as long as they are the owners of the property and their receipt shall be in full and final discharge to the insurers in respect of such loss or damage. The intervener was the owner of the said goods/machineries and had a legal right to the same. The interest of the intervener in the matter was not just purely commercial interest but went well beyond that. Any order which may be made in the action between the plaintiff and the defendant would certainly touch on the right of the intervener to its claim for losses and damages under the said insurance policy. The said endorsement clause clarified the legal position of the insured plaintiff as well as the intervener as owner in a dispute such as the present suit between the plaintiff and the defendant. The intervener had passed the test laid down in the case of *Pegang Mining Co Ltd v. Choong Sam & Ors.* Leave to intervene ought to be given to the proposed intervener. (para 6)

Case(s) referred to:

Arab Malaysian Merchant Bank Berhad v. Dr Jamaluddin Dato' Mohd Jarjis [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC ***(refd)***

EON Bank Bhd v. Pung Chong Thai [2001] 5 CLJ 469 HC ***(refd)***

Hong Leong Finance Bhd v. Staghorn Sdn Bhd [1995] 3 CLJ 368 CA ***(refd)***

Inai Etika Sdn Bhd v. Mohd Fadzil Wadi & Ors [1995] 1 LNS 90 ***(refd)***

Ingeback (Malaysia) Sdn Bhd v. East West Uni Insurance Bhd & Ors [1994] 2 CLJ 387 HC ***(refd)***

Lee Meow Lin v. Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, Intervener) [1989] 1 LNS 163 ***(refd)***

Malite Sdn Bhd v. Abdul Karim Gendut & Ors [1981] 1 LNS 72 ***(refd)***

Oscam SPA v. Overseas Union Bank (M) Bhd & Anor; Lim Keng Siew & Anor (Third Parties) [1999] 3 CLJ 399 HC ***(refd)***

Pegang Mining Co Ltd v. Choong Sam & Ors [1968] 1 LNS 96 ***(refd)***

Sanders Lead Co Inc v. Entores Metal Brokers Ltd [1984] 1 WLR 452 ***(refd)***

Tai Choi Yu v. Syarikat Tingan Lumber Sdn Bhd [1998] 4 CLJ 293 CA ***(refd)***

Tuan Hj Ahmed Abdul Rahman v. Arab Malaysian Finance Bhd [1996] 1 CLJ 241 FC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 15 r. 6(2)(b)

For the appellant/applicant - T Sagadevan; M/s Shearn Delamore & Co
For the defendant - Harjit Singh; M/s Lawrence Pereira & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Balia Yusof Wahi J:

[1] This is an appeal against the decision of the learned deputy registrar in dismissing the application of the intended intervener to intervene in the suit between the plaintiff and the defendant. The application is in Lampiran 9 and the notice of appeal to the judge in chambers is in Lampiran 19.

[2] In order to arrive at a proper decision as to whether the requirements of O. 15 r. 6(2)(b) have been complied with so that leave to intervene may be given to the intervener, it is necessary to go into the allegation of facts in some detail pursuant to the various affidavits filed herein.

[3] The proposed intervener formerly known as Oriental Finance Bhd had entered into a hire purchase agreement with the plaintiff to hire 22 units of Toyota Air Jet Loom, some machineries used by the plaintiff at its factory. By way of cl. 3(iii) of the said hire purchase agreement, the plaintiff has taken out an insurance policy with the defendant insuring the said machineries under its name as the insured and the intervener as the owner. The insurance policy is called a Special Contingency Policy and under Endorsement C002 of the said policy it is stated as follows:

> 002 Hire purchase Endorsement
>
> It is hereby understood and agreed that the Owners named in the schedule are the Owners of the property insured by the item(s) specified in the schedule as subject to this endorsement and that such property is subject of a Hire Purchase. Agreement made between the Owners of the one part and the Insured of the other part. It is further understood and agreed that any payments made in respect of loss or damage (which loss or damage is not made good by repair, reinstatement or replacement) under the terms of this Policy shall be made to Owners as long as they are the owners of the property and their receipt shall be full and final discharge to the Company in respect of such loss or damage. It is understood and agreed that notwithstanding any provision in the Hire Purchase Agreement to the contrary this Policy is issued to the Insured named in the schedule as the principal party and not as agent or trustee for the Owners and nothing herein shall be construed as constituting the Insured, as agent or trustee for the Owners or as an assignment (whether legal or equitable) by the insured to the Owners of his rights, benefits and claims under this Policy.
>
> Non-Cancellation Clause
>
> And it is further agreed that cancellation of the Policy shall not be effected by the insured except upon prior notification to the Owner in writing giving fourteen (14) days notice to the last known address of the Owner.

(Exhibit "OCHI" in Lampiran 8)

[4] During the currency of the said policy, the plaintiff's premises caught fire and the said machineries were destroyed. The plaintiff subsequently brought this action against the defendant as the insurers upon the defendant's refusal to admit liability and the interveners were also informed of this fact by defendant by their

letter dated 23 June 2003 (exh. "OCH6" Lampiran 8). In the meantime, the intervener has also communicated with the defendant intimating their intention to intervene in the suit between the plaintiff and the defendant.

[5] Decision

– A judge hearing an appeal against a decision of the Registrar of the High Court is not exercising appellate jurisdiction in the same sense as when he hears appeals from judgments, decisions or orders of the Subordinate Courts. Such appeals from the decision of the registrar are by way of a rehearing and the judge treats the matter as though it comes before him for the first time. (See: *Tuan Hj. Ahmed Abdul Rahman v. Arab Malaysian Finance Bhd* [1996] 1 CLJ 241.

– The powers of the judge under O. 15 r. 6(2)(b) of the High Court Rules 1980 is discretionary and may be invoked at any stage of the proceedings and any order for such, may be made either on application or on the court's own volition. (See: *EON Bank Bhd v. Pung Chong Thai* [2001] 5 CLJ 469, *Hong Leong Finance Bhd v. Staghorn Sdn. Bhd* [1995] 3 CLJ 368, *Tai Choi Yu v. Syarikat Tingan Lumber Sdn. Bhd* [1998] 4 CLJ 293).

– The purpose and spirit of O. 15 r. 6(2) of the High Court Rules 1980 is to prevent a multiplicity of proceedings and to enable the court to determine disputes between all the parties. It would also incidentally save costs and unnecessary expenses for all parties concerned. It is always desirable for the court to observe the principle that all parties ought to be brought before the court so that their rights and liabilities may be determined in one action instead of in several. (See: *Oscam SPA v. Overseas Union Bank (M) Bhd & Anor; Lim Keng Siew & Anor (Third Parties)* [1999] 3 CLJ 399, *Malite Sdn. Bhd v. Abdul Karim b. Gendut & Ors* [1981] 1 LNS 72).

– The rule is made to enable the courts to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object, it calls for a flexibility

of approach and it is undesirable to attempt to lay down any proposition which could be applicable to all cases. (See: *Arab Malaysian Merchant Bank Berhad v. Dr Jamaluddin Dato' Mohd. Jarjis* [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19).

– The test to be applied in deciding whether or not a party ought to be allowed to intervene is whether he has an interest directly related to the subject matter of an action. A mere commercial interest in the outcome of the action, divorced from its subject matter is not sufficient to entitle him to intervene. (See: *Sanders Lead Co. Inc v. Entores Metal Brokers Ltd* [1984] 1 WLR 452, Lee *Meow Lin v. Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn. Bhd, Intervener)* [1989] 1 LNS 163).

– Another way of expressing the test is: will his rights or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action. (See: *Pegang Mining Co. Ltd v. Choong Sam & Ors* [1968] 1 LNS 96, *Ingeback (Malaysia) Sdn. Bhd v. East West Uni Insurance Bhd & Ors* [1994] 2 CLJ 387, *Inai Etika Sdn. Bhd v. Mohd. Fadzil b. Wadi & Ors.* [1995] 1 LNS 90).

[6] Considering the factual matrix of the case, it is beyond doubt that the intervener has a direct interest in the subject matter of the action between the plaintiff and the defendant. Endorsement C002 in the Special Contingency Schedule to the Special Contingency Policy as exhibited in exh. "OCH1" of Lampiran 8, (the affidavit in support of the intervener's application) speaks of the right of the intervener as owners of the insured goods/machineries. Any payment made in respect of loss or damage under the terms of the policy shall be made to the owners as long as they are the owners of the property and their receipt shall be in full and final discharge to the insurers in respect of such loss or damage. The intervener is the owner of the said goods/machineries and has a legal right to the same. The interest of the intervener in the matter is not just purely commercial interest but goes well beyond that. Any order which may be made in the action between the plaintiff and the defendant will certainly touch on the right of the intervener to its claim for losses and damages under the said insurance policy. The said endorsement

clause clarifies the legal position of the insured plaintiff as well as the intervener as owner in a dispute such as the present suit between the plaintiff and the defendant. The intervener has passed the test laid down in the celebrated case of *Pegang Mining Co. Ltd v. Choong Sam & Ors (supra)*. Leave to intervene ought to be given to the proposed intervener. In the upshot, the appeal is hereby allowed with costs and the registrar's order be set aside.